

Jaiveer v. Balraj

PUNJAB AND HARYANA HIGH COURT

Justice Dr. Bharat Bhushan Parsoon

Jaiveer ... Petitioner,

Versus

Balraj and another ... Respondents

CR No.192 of 2015

12.01.2015

CPC O. 7 , R. 11 - Haryana Cooperative Societies Act, 1984, S. 102 - Issue of jurisdiction would not be attracted in this case since the matter is not with regard to management or business of the society - Suit has been filed challenging transfer of the suit land by taking the ground of fraud and misrepresentation - Trial court has rightly observed that the question of fraud and misrepresentation is a mixed question of law and facts, which cannot be decided without evidence from both the sides.

Shri Jasdev Singh Thind, , for the petitioner.

Dr. Bharat Bhushan Parsoon, J. (Oral):

Questioning jurisdiction of the civil court to entertain the suit filed inter-alia by the plaintiff, defendant No.2 in the suit, petitioner herein, made an application under Order VII Rule 11 CPC for return of the plaint.

It is claimed that since the matter pertains to the Haryana Cooperative Societies Act, 1984 (in short the Act), the civil court has no jurisdiction to entertain and decide the same and the suit should not have been entertained.

Counsel for the petitioner-defendant has further urged that the court below has overlooked the legal provisions under Section 102 of the Act.

Perusal of the impugned order as also the paper book reveals that the suit has been filed by the respondent-plaintiff challenging transfer of the suit land by defendant No.1, non-applicant, to defendant No.2 by taking the ground of fraud and misrepresentation. The trial court has rightly observed that the question of fraud and misrepresentation is a mixed question of law and facts, which cannot be decided without evidence from both the sides.

Issue of jurisdiction would not be attracted in this case since the matter is not with regard to management or business of the society. Decision rendered in *Gurdeep Singh v. The Upkar Coopeative (Non-agriculture) Thrift and Credit Society Ltd. & Others*, 2011(Suppl) Civil Court Cases 46 (P&H) in the facts and circumstances of the present case, being entirely different, does not support and sustain the case of the petitioner.

In para 8 of the impugned order, the trial court has discussed all the aspect as also the attending facts and circumstances very diligently and transparently. The same, with approval, is reproduced as under:-

"In the present case plaintiff is seeking declaration that he is owner in equal share of the suit land and transfer of land to defendant No.2 by defendant No.1 is illegal, null and void and is based on fraud and misrepresentation. It is settled principle of civil law that while deciding application under Order VII Rule 11 pleading of the

parties has to be seen and considered. In the present suit plaintiff is challenging transfer by defendant No.1 to defendant No.2 on ground of fraud and misrepresentation. The question of fraud and misrepresentation is a mix question of law which are to be decided on the basis of evidence led by both the sides. Therefore, keeping in view the pleadings of the plaintiff, this Court considered that the plaintiff has every right to prove his case. It is further observed that the jurisdiction of this Court is not barred to determine the question of fraud and misrepresentation in order to decide ownership of the property. Therefore, in view of averment made in the plaint provision under Section 102 of Haryana Cooperative Act is not applicable in the present case."

No merit.

Dismissed.